

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRISTIN A. CARMODY, M.D., M.H.P.E.,	:	
Plaintiff,	:	
	:	21 Civ. 8186
-against-	:	
	:	<u>ORDER</u>
NEW YORK UNIVERISTY, et al.,	:	
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

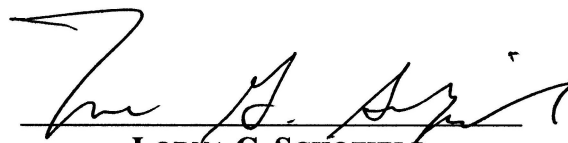
WHEREAS, Plaintiff has moved for sanctions in the form of attorneys’ fees spent preparing a motion for an adverse inference, which was ultimately denied without prejudice. The motion concerns the delayed production of certain text messages and the non-production of others, due to deletion.

WHEREAS, in a letter dated August 16, 2022, and in their opposition to Plaintiff’s motion, Defendants state that NYU’s internal counsel issued four litigation preservation/hold notices to relevant custodians from April 2021 through the date of the filing of this litigation. Defendants do not attach these notices to their opposition and do not describe their contents, the custodians to whom they were sent or counsel’s efforts to ensure compliance with the notices.

WHEREAS, the August 16, 2022, letter argues it was appropriate “to conduct a good-faith, manual search of [individual Defendants’] text messages on their personal phones, which counsel reviewed for responsiveness and produced.” Defendants’ opposition to Plaintiff’s motion also refers throughout to manual searches for responsive text messages. Neither document provides details on these searches, including whether they were performed by counsel or the custodians of the phones at issue, when they were performed, the instructions given to custodians (if the custodians conducted the searches) and, as a general matter, what steps counsel took to ensure any responsive text messages were located. It is hereby

ORDERED that no later than **July 26, 2023**, Defendants shall file a letter. The letter shall attach any litigation holds issued to custodians in this case. The letter shall list the custodians to whom these notices were sent and the dates on which they were sent. The letter shall describe any efforts of counsel to ensure compliance with the notices. The letter shall further describe the manual searches that Defendants performed to identify responsive text messages, providing the missing information listed above. The letter shall further state anything else relevant to assessing the reasonableness of Defendants' conduct with respect to preserving and identifying responsive text messages in discovery.

Dated: July 24, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE